

Academy Trust Handbook 2021: the future focus as we recover from Covid-19

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So it's that time of year again where the ESFA have published their latest edition of the Academies Financial Handbook, now to be known as the newly titled Academy Trust Handbook (the Handbook), effective from 1 September 2021.

As Baroness Berridge explains in her opening commentary, the new terminology is meant to reflect that the Handbook is close to a 'one stop shop' for trustees, local governors and leaders of trusts, and highlights trusts' responsibilities in a wider range of areas by reference in particular to safeguarding, health and safety, and estates management. Whilst these are not new responsibilities, the Handbook serves to highlight the key legislation and guidance in these specific areas to ensure the welfare of pupils. The same reasoning has been applied to also renaming the Financial Notice to Improve, now to be known as a Notice to Improve (NtI), again to reflect that the ESFA do, and will continue to, intervene in broader governance issues, not solely financial management concerns.

As anyone involved in the academy sector will know, the Academy Trust Handbook, together with the Academies Accounts Direction are important documents and form part of the regulatory framework for those who have responsibility for governing, managing or auditing an academy trust. These individuals will need to read and familiarise themselves with these new changes so that they are informed and ready to hit the ground running in the next academic year.

As the ESFA have done in earlier publications, there is a helpful summary of the main changes at pages 9 and 10 for quick reference, but of course it goes without saying that this is no substitute for reading the Handbook in detail. In particular, it is important to focus on Part 8, which sets out the schedule of requirements, the 'musts'. We would advise all boards to take a proactive approach to the Handbook and spend some time during their first meeting of the new academic year to discuss the changes and what areas their trust may need to particularly focus on going forward to deliver the best outcomes for our young people.

In this briefing, as in earlier years, rather than list all the changes the ESFA have already helpfully addressed in their guidance, we offer our own thoughts and reflections on three key themes that trustees and executive teams may wish to consider.

1. Cybercrime

With the challenges of Covid-19 and the new culture of universal remote working, cybercrime has dramatically increased during the pandemic across all sectors. In March this year, the BBC reported that more than 6,000 cases of Covid-related fraud and cybercrime have been recorded by the UK's police forces during the pandemic. Educational establishments have been heavily impacted by scams, as reported in the National Cyber Security Centre's publication on ransomware attacks on the UK education sector by cyber criminals. This report was subsequently followed up by a letter to all academy trusts in April this year from the Chief Information Security Officer for the Department of Education (DfE) advising senior leaders to ensure their trusts are protecting themselves from cyber-attacks and are fully prepared should an attack happen. To address these concerns the Handbook now includes a dedicated section on cybercrime and states trusts must put in place proportionate controls and take appropriate action where a cyber security incident has occurred.

It is important the board and senior leaders understand the threats and the considerable damage in terms of lost data or disruption to services a cyber-attack can have. Senior leaders should be ensuring their IT teams or provider can confirm the trust has the ability to restore its systems and recover its data from backups in the event of an incident. If not considered already, this should certainly be top of the agenda.

Taking this further, and perhaps an indication of how the education sector has already been impacted, trusts must get permission from the ESFA to pay any cyber ransom demands, fully supporting the National Crime Agency's recommendations. Links to further support and guidance on these significant risks are also provided in the Handbook.

2. Governance

The continued focus on governance is again, similar to last year's publication, a theme that runs through the new Handbook. The interaction between members, trustees and senior leaders is something the DfE have been focusing on for some time in recognition of the benefits and impact of strong governance on the performance of successful academy trusts. In this latest edition, in respect of roles and responsibilities the main changes are:

- information on suitability checks for existing and future members;
- confirming that trusts should have reserved places for parents in their governance structure;
- emphasising the process of appointing a senior executive leader as trustee;
- emphasising the value of external reviews of governance for trusts;
- advising trusts to liaise with their Regional Schools Commissioner (RSC) when a senior executive leader is planning to leave the trust, to discuss their structure and options;
- replacing the term 'clerk' with 'governance professional'; and
- reminding trusts of the requirement for Disclosing and Barring Service checks.

Taking a couple of these points, the requirement that trusts must not appoint any individual who is subject to a section 128 direction (which prohibits individuals taking part in academy trust management) as a member, indicates the Department's continued focus on the importance and distinction of the member role. As you will see from our separate briefing on the new Model Articles, the same theme emerges, and a growing focus on the suitability of members is evidenced by the list of member disqualifications in the new Articles having been significantly expanded. The importance of the member role feeds through in the new Handbook □ that with effect from 1 March 2022, any newly appointed senior executive leader can only be a trustee if the members decide to appoint them as such, the senior executive leader agrees and the trust's articles permit it.

The DfE's recognition of the importance of governance continues with the emphasis on the value of an objective and independent external governance review, with particular emphasis on its importance before a trust grows significantly. Interestingly, the importance of the member role emerges again, with reference to such reviews also covering the interaction between members and trustees to include the extent to which members are able to assure themselves that trustees undertake their duties effectively. Given the number of trusts which have been identified as having significant failings in governance, the DfE are clearly expecting members to take a more proactive role. One way of doing this, which we have already supported some of our clients with, is through putting in place a 'members handbook', providing a practical reference guide to support your members in carrying out the role effectively.

There is also a requirement on trusts to appoint a 'governance professional' (again another change in terminology) to support the efficient functioning of the board. It is recognised that the skillset needed by a governance professional to support an academy trust board is very different to that of a clerk in the maintained sector, and trusts should be mindful of the requirements when making their appointments.

3. Future growth

There is a new requirement that when any senior executive leader is planning to leave the trust (for example, retirement or resignation) the board of trustees should approach their RSC in advance to discuss their structure and options, including plans for recruitment. This new positive obligation expressly written into the Handbook for trustees to involve the RSC in their plans is possibly linked to the message delivered by Gavin Williamson at the Confederation of School Trusts conference in April, quickly followed by the DfE guidance Building Stronger Trusts and the Government's vision for every school to be part of a family of schools in strong academy trusts. The same theme continues in that boards are advised to review their scheme of delegation annually, and immediately when there has been a change in trust management or organisational structure.

Whilst this follows the focusing-on-governance theme which we have commented on above, the attention on growth is echoed and serves as a reminder that when trusts are considering expansion and growing their 'family of schools', governance should be a pre-eminent consideration and factored in as part of that strategy.

Please do get in touch if you want to discuss any of the issues above or are interested in discussing the ways we can support the board and executive leaders with their strategic functions.

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